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AN INTRODUCTORY CHAPTER
TO THE HISTORY OF THE
TRIALS OF

Moyer, Haywood, and
Pettibone, and Harry
Orchard

By FREMONT WOOD
Trial Judge



1931

THE CAXTON PRINTERS, LTD.
Caldwell, Idaho.



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FOREWORD

The following pages contain the introductory chapter of the history now being prepared by Judge Fremont Wood who tried the Moyer-Haywood-Pettibone labor trials and subsequently passed sentence upon Harry Orchard, the principal in the assassination of former Governor Steunenberg.

This does not purport to give any portion of the details of the trial appearing of record, but gives only the viewpoint of Judge Wood, after a retrospect of nearly twenty-five years, involving details which have never been made public. Judge Wood's complete work, of which this is the preliminary chapter, will probably be ready for the printer within the next few months.



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INTRODUCTION

THE assassination of Frank Steunenberg, former Governor of Idaho, grew directly out of the troubles theretofore existing in the State of Idaho between the mine workers and the mine owners of the Coeur d'Alene mining district in Shoshone County, Idaho. The first outbreak in this district, which occurred July 11, 1892, resulted in the blowing up of the Frisco mill at Gem and the killing of Ivory Bean, apparently by the organized miners. This conflict was precipitated by an injunction issued a few months prior thereto by the United States Circuit Court at Boise, Idaho, and the immediate difficulties arose out of resistance to this injunction at the time of the blowing up of the Frisco mill. I was United States Attorney for the District of Idaho at the time. On the day following this explosion I was called from my office in Boise, Idaho by General George H. Roberts, the Attorney General of the State, for consultation with the State authorities regarding the course to be pursued by the Executive Department of the State and the Federal authorities. The organized resistance to the injunction constituted an offense against the United States conspiracy statute. When I arrived at the Attorney General's office, he advised me of the latest news from Shoshone County and suggested a proclamation of martial law. He had already been in consultation with the Governor, and handed me a telegram which he had finished writing after my arrival. This, he suggested, contained the views of his office as well as of Governor Willey and was intended for the signature of the Governor. Without authority to act so far as any recommendation for State action was concerned, I saw no objection to the procedure and expressed my personal views approving the course outlined. The telegram as taken from the files of the *Idaho Statesman* of July 12, 1892, was as follows:

Boise City, July 11, 1892.

Hon. Benjamin Harrison, Washington, D. C.

MR. PRESIDENT:

This morning riot and bloodshed by the striking miners of the Coeur d'Alene district commenced. A mill was blown up by dynamite and many men were killed. Inspector General Curtis, I. N. G., informs me

four or five hundred armed men constitute the mob. The legislature is not in session and cannot be promptly convened. The civil authority of the county and state is wholly inadequate to maintain peace. The immediate available military force of the Idaho National Guard numbers but 196 men, which is far too few in my opinion to successfully cope with the mob, though I will order it at once into the field. In this emergency I deem it necessary to call for the assistance of federal troops and therefore request that a sufficient force be detailed from Fort Sherman or elsewhere to act in concert with state authorities in maintaining public order.

N. B. WILLEY, *Governor.*

Martial law was subsequently declared for Shoshone County. United States troops were immediately brought into the district by order of the President acting through the Secretary of War. The judicial forces of the County were reorganized; a bull pen was established, and a large portion of the union miners who had remained in the County were arrested and placed therein. The first punitive action growing out of these outrages consisted of complaints filed in the Federal Court at Boise, charging the leaders of the various miners' unions and the leading members thereof with violation of the injunctions issued from that Court. Hearings were had before the United States Circuit Court at Boise, Idaho, and ten or twelve of the miners were sentenced to varying terms of imprisonment in the Ada County jail at Boise, Idaho. In the meantime the problem arose as to what action should be taken in respect to the large number of miners who had been arrested and were then being held in the bull pen at Wallace. As a result of consultations, the District Court ordered a special term of the United States District Court to be held at Coeur d'Alene City in Kootenai County, to be convened August 23, 1892. A special United States grand jury was ordered to convene at the same time. Upon the opening of this Court all evidence involving the violation of the injunction was placed before the grand jury which subsequently returned indictments against approximately one hundred and fifty miners, not including those who were already held and under sentence for contempt by the Federal Circuit Court. A trial jury was immediately ordered for the trial of these indicted miners. It was apparent that it would

be impossible to try all of the indicted miners, and for that reason about twelve or fifteen of the leading violators were selected for trial and the remainder were discharged from custody, as I now remember, each upon his own recognizance.

After the list selected for trial had been worked out and approved by myself as United States Attorney, I then, accompanied by the United States Commissioner for the Northern District at Coeur d'Alene City and the United States Marshal and his deputies, proceeded to Wallace, the county seat of Shoshone County, where the bull pen was located. After a hall of sufficient capacity to accommodate the Court had been secured, the defendants or occupants of the bull pen were brought before the Commissioner; those indicted and selected for trial were notified of the action to be taken and were immediately turned over by the authorities representing Shoshone County to the United States Marshal who had bench warrants for their arrest. The remainder of the defendants were then notified of the purpose of the Government to discharge them from custody. This was immediately done. The discharged miners, while pleased at the action of the Government in granting their release, seemed loath to separate from those of their associates who had been selected for the trial. I remember well the parting of these miners who had been held in strict confinement for at least two months in a stockade utilized for that purpose. The discharged miners then returned to their quarters, secured their few belongings, and commenced to scatter in all directions. At this time no evidence of revenge or retaliation was anywhere expressed, and my personal view was that the attitude of the miners indicated submission to the authority of the law.

Among the defendants indicted and taken over by the United States Marshal at this time was one, George A. Pettibone, who later was placed on trial as one of the defendants charged by the Canyon County grand jury with the murder of former Governor Steunenberg. Pettibone, at that time, was not a miner. He was, however, a friend of the miners and, I believe, a member of their organization. For some time previously he had been a justice of the peace for Gem precinct, in which precinct the Frisco mill was located.

Previous to the July difficulties non-union miners had been brought in for the operation of the mines protected by the injunction. Guards had also been brought into the district from outside. Many of these were arrested, charged with violation of the State statute, and, as reported to me by very reliable authority, taken before Pettibone and immediately convicted and committed to the county jail then at Murray, Idaho, some thirty miles from Wallace. The Frisco mill was destroyed by placing dynamite at the head of the penstock connecting the flume with the water wheel of the mill. The water was turned off, and several miners congregated at the end of this flume and released the dynamite into the penstock, as a result of which the mill was entirely destroyed. At the time of the explosion, the miners at the head of the penstock were observed to be in commotion and at the trials it was assumed that this commotion was caused by the reaction from the explosion. It was clearly established at the time of the trials that Pettibone was one of these persons. One of his arms at the wrist was badly lacerated and for a long time he wore that arm in a sling. After the explosion, he, with some of his associates, immediately left the head of the penstock and followed a trail down the mountain side to the highway which led from Wallace to Burke. They proceeded up this highway to Burke where Pettibone went into a drug store and a doctor dressed or at least gave first aid to his lacerated arm. These facts and Pettibone's identity were established by a large number of witnesses.

Following this explosion at the Frisco mill, the non-union miners became terrified and many of them were driven from the district. Conspicuous in the round-up of these non-union miners and their expulsion from the district before the Federal troops came in was Pettibone. Only four of the twelve miners placed on trial were convicted; Pettibone was among the number. While there was much evidence connecting every one of the remaining defendants with actual participation in the attacks upon the union miners, the remaining defendants were able to establish a series of alibis sufficient to raise a doubt in the minds of the jurymen. About a year afterwards, the proceedings of this trial were reviewed by

the Supreme Court of the United States on appeal in the case of Pettibone, et al. vs. the United States, 148 U. S. 197, and the Supreme Court vacated the judgment of conviction against the convicted defendants.

The author of this work never afterwards heard of the defendant, Pettibone, until the newspapers announced his arrest in the city of Denver, charged jointly with Charles H. Moyer and William D. Haywood with the murder of Governor Steunenberg.

Miners' Union

At the time of and prior to the trials of 1892, the miners of Shoshone County had been organized into separate units or organizations according to the localities in which the mines where they were employed were situated. As I now recall them, there was one at Wardner, where the Bunker Hill and Sullivan mine was located; one at Gem where the Helena and Frisco and the Standard mines were located; one at Burke where the Tiger and Poorman were located, and one at Mullan near which at that time several smaller mines were located. A central organization consisting of a central union with which all of these unions were affiliated, existed at Wallace, afterwards the county seat of Shoshone County. Later, these unions were federated with miners' unions of other mining districts and organized into the Western Federation of Miners.

After the difficulties and trials of 1892, the mining companies operating in Gem, Burke, and Mullan resumed employment of many of the miners who had been involved in the blowing up of the Frisco mill. In this connection one other fact should be here recorded: Following the explosion of the Frisco mill and before Federal troops arrived, the miners from the different unions congregated and proceeded by train to Wardner Junction near which the concentrator of the Bunker Hill and Sullivan mine was located. They had secured a large amount of dynamite and, threatening its explosion, placed the same at different points in and around the Bunker Hill and Sullivan concentrator. Negotiations with the officers of this company, however, resulted in the miners changing their pur-

pose to destroy the concentrator. The explosive was taken from the mill and they returned to their respective homes. This is related at this time because, seven years later, lacking but a few months, the same organized miners from the same districts duplicated their attack upon the Bunker Hill and Sullivan concentrator and destroyed the same by exploding dynamite placed substantially as it had been placed on the former occasion.

Another fact involving the 1892 troubles should, I think, be here recorded. Prior to the explosion and blowing up of the Frisco mill, John Kneebone had worked as blacksmith for a considerable time at the Gem mine. He was not a union man, and I am not sure that he was eligible to membership in the Union. He was, however, very familiar with the operation of the mines in and around Gem and particularly the Frisco and Gem mines. He was a witness for the United States before the grand jury and upon the trials at Coeur d'Alene City following. During the progress of the trial at Coeur d'Alene I was standing beside Kneebone when he was insultingly threatened by an entire stranger who that day had appeared in Coeur d'Alene City for the first time. Kneebone turned to me and made some inquiry that indicated to the man questioning him that I was the United States Attorney in charge of the cases. The fellow immediately slunk away. Within two hours an indictment was returned against him by the grand jury charging him with intimidation of a Government witness, but before the bench warrant could be served he had disappeared and it was subsequently ascertained that he had left Coeur d'Alene City by the box-car route. No particular attempt was made, however, to secure his arrest but the venom which he expressed in his remark to Kneebone was apparently the sentiment of the organized miners and their friends and sympathizers. Before the trials were concluded I talked personally with Kneebone and impressed upon him the very great danger to which he would be subjected if he remained at Gem at his present employment. The substance of his reply was that he preferred death if he could not be permitted to exercise the rights of an American citizen. Several years afterward he was attacked by a band of miners'

sympathizers while employed at his labor at Gem and shot in the back while attempting to make his escape. It was my thought at the time of the trials at Coeur d'Alene City that Kneebone was a brave man. He was particularly careful to give no testimony which was not in strict conformity with the truth, and he could not be intimidated to do otherwise nor to withhold important testimony. When I read in the public press of his cowardly assassination, my wonder was that he had escaped the vengeance of his miner enemies for so long a time.

Another individual attack should perhaps be here recorded: This attack resulted in the death of one, Whitney, who was superintendent of a mine at Gem. He was taken from his room at Gem and ordered to leave the country. He started away, walking on the railroad track, but was shot in the back and subsequently died.

Following these offenses, came the attack of April, 1899 by the consolidated forces of the union miners from the Gem, Burke, and Mullan Union upon the Bunker Hill and Sullivan concentrator at Wardner Junction. For this purpose the miners from Gem, Burke, and Mullan evidently organized with military precision, assembled at Wallace, and thence proceeded to Wardner Junction where they placed a large quantity of dynamite in the Bunker Hill and Sullivan concentrator, blew up the mill, and killed two miners who were evidently innocent witnesses of the proceeding. Their purpose accomplished, they immediately returned to their train at Wardner Junction, returned to their several headquarters, and dispersed with the same method and precision with which they had assembled. At the time of the blowing up of this concentrator and the killing of Cheyne and Smith, Frank Steunenberg was Governor of Idaho. At the time of his election, he was the publisher of a Democratic paper in Caldwell, where he resided. Prior to coming to Idaho he had been a printer by occupation, a member of the Typographical Union, and was undoubtedly a sympathizer with organized labor when conducted and operated within proper limits. His nomination when he was first elected in 1896 was generally understood to have resulted from the support of the delegation from Sho-

shone County which was absolutely controlled by the organized miners of that district, and when the time came for the attack upon the concentrating plant of the Bunker Hill and Sullivan Mine Company, the leaders of the organized miners were evidently proceeding upon the assumption that no action would be taken by Frank Steunenberg inimical to their interests, provided they immediately returned to their ordinary occupations. In fact, it was openly claimed among the miners that there could be no cause for declaring martial law or asking for the aid of Federal military powers if the miners had returned to their several occupations before action could be taken by State authorities. The leaders of the miners, however, miscalculated as to the attitude of Governor Steunenberg, for when he was placed in the position of acting with his duty to the State on one side of the balance and his feeling of friendship toward organized labor on the other, he had no hesitation in determining his course. When the information was conveyed to him of the destruction of this property, he immediately declared Shoshone County in a state of insurrection and called upon the President to send troops to the aid of the State in protecting lives and property and upholding the authority of the law. This action proved to be the parting of the ways between Frank Steunenberg, the Governor, and the organized miners of the Coeur d'Alene mining district and subsequently furnished the motive for the sentence of death against him which resulted in the explosion near the entrance to his home in Caldwell, Idaho, effecting his death on the evening of December 30, 1905, more than six years after the difficulties following the destruction of the Bunker Hill and Sullivan concentrator in the spring of 1899. Again as in 1892, in order to provide for and take care of the prisoners arrested under State authority, it became necessary to establish a stockade characterized as the bull pen. One of the occupants of this bull pen was Jack Simpkins, who afterward became one of the leading officers of the Western Federation of Miners and who was with Harry Orchard at Caldwell shortly before the killing of Governor Steunenberg. It was reported at the time, and probably with some truth, that the miners were subjected to unnecessary indignities from their guards and

attendants while incarcerated in the bull pen, as a result of which, threats of violence were openly made against those in authority. It appeared from the testimony upon the trial of the case against William D. Haywood that Orchard was one of the active participants in the blowing up of the Bunker Hill and Sullivan concentrator, but that he fled the district and thereby escaped arrest when the remaining union miners were arrested and detained and held for trial.

On the evening of December 30, 1905, I was attending to business in my law office in Boise, Idaho until about nine o'clock in the evening. Before returning home I walked nearly two blocks out of my way and called at the Idan-ha Hotel. This was unusual but I had a strong feeling for some reason that I should examine the hotel register before returning to my home. As I entered the hotel lobby I was struck by the absence of the usual number of people at that hour of the evening. Aside from the clerks attending upon their duties, I recall only one man in the lobby, General Joseph Perrault, who approached me as I entered the lobby. I immediately remarked to him:

"Why the apparent gloom and suppressed silence?"

"Have you not heard what has happened?" he replied.

I said I had heard nothing unusual, to which he replied,

"Governor Steunenberg early this evening was assassinated by the explosion of a bomb as he passed through his gate at his home."

The report had just come that he had died and that a special train had taken many of the leading citizens of Boise, including Governor Gooding, to Caldwell.

My first reaction was the thought of the Shoshone County mining troubles which had culminated during Governor Steunenberg's administration. I knew nothing of the officers of the Western Federation of Miners. As before stated I had never heard of the defendant, Pettibone, since his discharge from prison in the latter part of 1893, but I did know in a general way of the intense hatred of the union miners who held Governor Steunenberg directly responsible for their arrests and subsequent hardships following the blowing up of the Bunker Hill and Sullivan concentrator. Whenever the matter

was referred to following the arrest of Orchard I could not avoid the almost constant recurrence of this thought and accordingly I was not much surprised when the public press announced the confession of Harry Orchard and the arrest of Moyer, Haywood, and Pettibone at Denver, Colorado. Before the arrest of Western Federation officers at Denver, Orchard had been conveyed to Boise where he was confined in the State penitentiary for safe keeping, and it was while he was in custody of the sheriff that I first observed Orchard. My second observance of Orchard was something over a year later when I had occasion to preside in the Court of Canyon County where his case was pending for the purpose of continuing the case. When the case was called, I directed the sheriff to bring in the defendant. My direction was immediately met with the announcement from the sheriff that he was already in the court room. I then directed the defendant to stand up and when he arose I presume I was the most surprised individual in the court room, because the Harry Orchard then standing before the Court seemed to be vastly different from the Harry Orchard I had observed when he was being transported from the Canyon County jail to the State penitentiary at Boise. The pictures of Orchard which have been published and which were taken soon after his arrest show him with the hard lines then existing over his face which to my mind evidenced a long period of criminal activity. These lines had now disappeared; the hardness was entirely eliminated, and his countenance had taken on an appearance of conscious, satisfactory repose, exhibiting a change that I had never supposed possible in so brief a period of time.

Many pictures of Orchard were published, most of them taken during the period of the trial, and I do not recall observing any that were not good reproductions of the Orchard face at the time he was called upon during the trial of the Haywood case to meet not only the scrutiny and grilling fire of cross-examining attorneys but also to face the careful scrutiny of the public at large which then extended practically to the entire civilized world.

After the arrest of Orchard investigations disclosed that he had been accompanied at Caldwell by an individual who

had traveled quite extensively with him and had been observed with him in the vicinity of the Steunenberg home. Later, within a few days of this discovery, a photograph of Jack Simpkins was secured and several witnesses identified this photograph as a correct likeness of the man who had been in company with Orchard for several days at Caldwell some weeks prior to the assassination of Governor Steunenberg. During the early investigation of the case the State authorities employed the services of the Pinkerton Detective Agency. The operations of the detective agency were under the immediate direction of James McPartlan. After several interviews by McPartlan, Orchard confessed his own connection with the case and directly involved Charles H. Moyer, President, William D. Haywood, Secretary and Treasurer, Jack Simpkins, member of the Executive Committee, and George A. Pettibone, a close friend and adviser of the organized miners. So far as I know this confession was never published in full, only the substance of it having been given to the press. It did not appear during the trials of the cases against either Haywood or Pettibone, so I assume that there was nothing in the written confession which the attorneys for the defense could utilize to the advantage of their clients. Immediately following the Orchard confession complaints were filed in Canyon County charging Moyer, Haywood, Pettibone, and Jack Simpkins with the murder of Governor Steunenberg. Warrants of arrest were immediately issued thereon and the Governor of Idaho issued his requisition upon the Governor of Colorado for the arrest and delivery of all of these defendants to the accredited representative of the State of Idaho. The requisition of the Governor of Idaho was honored by the Governor of Colorado; Moyer, Haywood, and Pettibone were arrested on the seventeenth day of February, 1906, and immediately delivered to the agent of the State of Idaho who conveyed them forthwith by special train out of the State of Colorado and directly to Idaho where the charge against them was pending. The details of the Orchard confession as published were given to the public on February 20, 1906. Within two or three days after the arrival of these defendants in Idaho, Attorneys Edmond F. Richardson, Fred Miller, and John Nugent announced them-

selves as attorneys for the three defendants, and on February 23, 1906 made application for writ of habeas corpus in their behalf to the Supreme Court of the State. In the meantime a grand jury was impaneled in Canyon County and afterwards, on March 9, true bills of indictment were returned against Orchard, Moyer, Pettibone, Haywood, and Jack Simpkins. The application for writ of habeas corpus to the Supreme Court of the State was denied, and on March 15, the same defendants made application for a similar writ to the United States Circuit Court for the District.

Orchard was arraigned on the fifteenth day of March on the indictment charging him with the murder of Governor Steunenberg. He declined to plead, and, under direction of the Court, a plea of not guilty was entered in his behalf. The next day, Moyer, Haywood, and Pettibone were arraigned on the joint indictment charging them jointly with Simpkins with the murder of Governor Steunenberg. The usual pleas and motions were made, and on the seventeenth day of March, pleas of not guilty were entered by the three defendants jointly indicted. In the meantime the application for writ of habeas corpus to the United States Circuit Court had been denied, and on April 3, appeals were taken by the defendants in the habeas corpus cases to the Supreme Court of the United States. Later, on May 29, these cases were called for trial in the District Court of Canyon County and, upon the suggestion of the attorneys for the State that the Federal statute prohibited further proceedings in a State court pending decision of the United States Supreme Court on an appeal in a habeas corpus proceeding, the Court immediately decided that it had no power to proceed with the trial of these cases until the remittitur was returned from the United States Supreme Court showing the disposition of the case on appeal. This fact is recorded at this time on account of the wholesale criticism of the Idaho authorities for their failure to give the defendants an immediate trial. The authors of the published criticism knew the facts and knew the impossibility of proceeding, and at the same time, by continuous misrepresentation, did everything possible to inflame the public mind and

particularly the labor world with what was claimed by them as unfair treatment of the arrested defendants.

Steve Adams

In his confession, Orchard had involved as an accomplice of many of his confessed crimes one, Steve Adams, who was arrested upon application of the State authorities somewhere in Baker County, Oregon and brought by Harvey K. Brown, then the sheriff of Baker County, Oregon to Boise, Idaho where he was turned over to the authorities and confined in the State penitentiary near Orchard. So far as I have been able to ascertain Adams was not charged with complicity in the Steunenberg murder. I have not been able to ascertain the charge upon which he was arrested and brought to Idaho. It was generally understood, however, that the Orchard confession had involved Adams in some murders in Shoshone County which involved claim jumpers upon claims belonging to Jack Simpkins and others.

Adams was arrested about February 20, 1906 and on March 1, it was announced that he had made a confession to the detectives largely corroborating the confessions of Orchard. More than two months after his arrest, while he was confined at the penitentiary, a relative made an application in his behalf for a writ of habeas corpus asking for his release from the charges against him. This writ was subsequently granted, and on September 8, 1906, Adams was released from the proceeding under which he had been held and immediately re-arrested on a charge of murder involving the killing of the claim jumpers in Shoshone County. There is one fact in connection with the release of Adams upon habeas corpus that I think should be here recorded.

John T. Morrison

John T. Morrison who was an attorney residing at Caldwell, Idaho had been governor of the State during the biennum of 1903 and 1904. Early in the year 1905 after his retirement from office, he returned to Caldwell where he resumed the practice of his profession. When the relative of Adams found Adams confined with no legal charge against him, he im-

mediately sought counsel to secure his release. He applied to former Governor Morrison with this object in view and succeeded in employing him for this specific purpose and no other. Mr. Morrison, recognizing and fully realizing his duty as attorney, accepted the employment and prepared the application for the writ of habeas corpus which was admittedly correct and to which the imprisoned petitioner was legally entitled, yet criticism of Mr. Morrison for this action became very acute and resulted in the estrangement of many friends and supporters of former years. At the time of Mr. Morrison's employment and following the criticism which followed, I made some investigation of the situation and thoroughly satisfied myself that Mr. Morrison had done nothing inconsistent with his duty as an attorney, and it was my opinion then and still is that he would have violated his oath as an attorney if he had refused to accept the employment for any reasons personal to himself. I am mentioning the matter because there was a general feeling existing at the time of the murder of Governor Steunenberg that no attorney residing in and practicing law in Canyon County where the Governor resided could properly accept employment for the defense of any persons arrested in connection with the investigation of the murder charge. It is the duty of Courts to provide counsel for needy defendants and they should not force any defendant to trial without being duly represented whenever attorneys are available therefor. Mr. Morrison was a lawyer of ability and was always mindful of his duty and obligations under his oath as an attorney, and the future historian of the State will be able to find no subject of criticism in connection with his employment in behalf of Steve Adams.

Immediately following Adams' arrest upon the charge or charges of murder committed in Shoshone County, he was turned over to the sheriff of that county and on February 11, 1907 his first trial was commenced at Wallace, the county seat of Shoshone County. He was defended by the attorneys for Moyer, Haywood, and Pettibone and on March 7, following, the jury trying him was discharged, having been unable to agree upon a verdict. Later the same case was transferred to Kootenai County for trial where it was again tried with the

result of a disagreement. Following this last disagreement the prosecutions against Adams in Shoshone County were ended and he was turned over to authorities from Colorado where indictments for murder had been returned against him. He was subsequently tried at Grand Junction, Colorado for one of the murders disclosed by his own and Orchard's confessions. This trial resulted in a verdict of not guilty and that ended all prosecutions so far as known for murders committed in the State of Colorado. I never had occasion to examine the confession signed by Steve Adams. It is known, however, that he repudiated it shortly after it was made and stated that it was made under duress. I understand it was admitted under instructions of the Court, in the two trials in Shoshone County but was rejected *in toto* by the Colorado Court when Adams was tried in that State.

Trial of Haywood

As a preliminary of this trial it seems necessary to explain conditions existing in Canyon County following the Steunenberg murder. At the time Steunenberg was killed Frank H. Smith of Caldwell was the District Judge of the Seventh Judicial District. As a citizen of Caldwell he entered into the investigation with his neighbors for the purpose of determining the author of the crime, participated in the consultations leading up to the arrest of Orchard, and afterwards, as Judge of the Court, denied the application of the defendants for an immediate trial giving as his reasons therefor the pendency of the habeas corpus appeals. He likewise overruled all demurrers and motions going to the sufficiency of the indictment. He was a candidate for re-election. Opposition developed against him among the sympathizers with these defendants. The opposition necessarily centered upon Edward L. Bryan who was nominee on the Democratic ticket for the same position. There was no reason why the miners or their friends should give their support to Bryan in preference to Smith other than the fact that they considered Smith unfriendly, and figured that if elected, Judge Bryan would at least give them fair play. The fact is, there was no reason for their

concluding that Judge Smith if re-elected would do otherwise. Judge Bryan, however, was elected. He had been appointed by the Court when Orchard was arraigned and stood mute, to represent Orchard, and at the time of his election as Judge the record disclosed that he had represented Orchard as an attorney upon his arraignment. After qualifying as Judge, Bryan felt some delicacy about proceeding with the trial of the case, in view of the fact that he had appeared as attorney for Orchard who was indicted upon the same charge as the other defendants were indicted upon. He realized at the time that his client, Orchard, was to be the principal witness against the defendants and with that situation in view he hesitated to assume responsibility for presiding at the trial.

Shortly after my qualification as Judge, Judge Bryan visited me at my chambers in Boise, suggested to me the delicate position in which he felt he would be placed if he tried the cases and inquired if I would be willing to assume the burden of the trials if he disqualified himself and called upon me to try the cases. Our consultation was not lengthy. I immediately advised Judge Bryan that I was not seeking the laborious task of trying these cases but neither was I running away from or seeking to avoid any necessary responsibility. The time for holding the Canyon County term had already been fixed by publication for March 12. We discussed the fact of a considerable time intervening between our interview and the time of the trial and as it was fully understood and agreed between Judge Bryan and myself that no mention of the matter would be made until I was called into Court to try the cases, I agreed with him to assume the burden of the trials. No mention of the fact was made by either Judge Bryan or myself that this action was to be taken. Insofar as I personally know it was not known outside of my own family and possibly Judge Bryan's family that I would occupy the bench during these trials until the announcement was made in open court on the opening day of the Canyon County term when the record was made by Judge Bryan which disqualified him and called upon me to try the cases.

The first action taken by the defendants was a motion to discharge the defendants on the ground that they had not

been given speedy trial. I immediately overruled this motion without argument on the ground that the proceedings of the defendants in the habeas corpus cases had automatically deprived the Court of the power to proceed. The application for change of venue, supported by numerous affidavits was then filed, heard, and submitted to the Court. The application for change of venue resulted in the removal of the trials of Moyer, Haywood, and Pettibone from Canyon County where they were pending to the District Court of Ada County where I was the presiding Judge. At the opening of the Ada County term the case against Haywood was set down for trial to commence on the ninth day of May following. Shortly before the case was ready for trial a situation occurred involving the employment of counsel for the defendants which I think should be mentioned at this time.

Edgar Wilson

Edgar Wilson had been an attorney of some prominence in Ada County for many years. From 1884 when he was admitted to the bar he had been a partner in the legal practice with me. During the existence of this partnership Mr. Wilson had been city attorney of Boise City, district attorney of Ada County, and had been closely associated with me in prosecutions and cases involving many details as United States Attorney for the territory and district of Idaho. Mr. Wilson was elected to Congress in the November election in 1894, and the law partnership existing between him and me was continued until November, 1895, when his congressional duties called him to Washington. From that time on we were never partners in the legal profession. He had his own business; I had mine. As a result of long years of practice, we had accumulated the somewhat extensive and perhaps expensive law office and equipment and these were afterward kept up by the joint act of both of us until I was elected to the District bench in 1906. Mr. Wilson, however, after his first election to Congress, gave very little attention to legal practice. He devoted the larger portion of his time to business affairs in which he was engaged and through which he largely profited. I do not recall now that during all the years after he actually entered Con-

gress that he participated in any way in any of my personal business although he frequently associated me with him in some of his own cases. Mr. Wilson, although a reputed friend, was most caustic in his criticism of former Governor Morrison for accepting employment in the Adams case on account of its close association with the Haywood case. I had personally discussed Mr. Morrison's situation with Mr. Wilson, had very strenuously insisted upon Mr. Morrison's right and duty in the premises and Mr. Wilson just as insistently claimed that Mr. Morrison had no right to accept such employment. My own surprise may well be imagined when, on about May 7, 1907, but two days before the case was to be called for actual trial, Mr. Wilson came to me and informed me that he had an opportunity to accept employment as attorney in these cases, but at the same time advising me that his action in the matter would be determined entirely upon my idea as to whether such employment would in any way embarrass me as presiding Judge in the case.

While somewhat stunned at Mr. Wilson's suggestion and the further fact that he should assume it necessary to consult me in relation to the matter, I immediately determined that I would not assume the responsibility of keeping him from accepting employment upon the idea that his connection with the case as attorney for the defendants would in any way embarrass me upon the trial. It was necessary that I act quickly and upon my own judgment in the matter. I felt that our previous association could in no way affect my ability to try the cases and do exact justice, so I immediately replied to Mr. Wilson that I could see no reason why I should be embarrassed with him in the cases. During our brief conversation he stated to me that Mr. Darrow had come to him proposing his employment on the advice of former Senator Pettigrew of South Dakota. I have since ascertained the facts in relation to the Wilson employment.

The extent of Senator Pettigrew's connection with the affair was the introduction of Mr. Darrow to Senator Dubois of Idaho whose term as Senator expired on the third of March, 1907. Senator Pettigrew introduced Senator Dubois and Mr. Darrow at a dinner engagement arranged for that purpose.

At this time Darrow informed Senator Dubois as to the situation of the miners' trials in Idaho, that the case was to be tried at an early day and that they wanted counsel that could be depended upon in Boise City. Mr. Darrow described to Mr. Dubois the character of the attorney that they desired and Mr. Dubois replied to him that he knew of only one attorney at the Boise bar who would fill his requirements and that was Edgar Wilson, but he advised him at the same time that he could not secure the services of Wilson because he had been the law partner of Fremont Wood, who was to be the presiding Judge at the trials. This information I have directly from Senator Dubois. The last time he was in Idaho before his death, I spent an hour with him at his hotel room in Boise when he gave me the entire details of this affair. He told me that when he advised Darrow that he could not secure the services of Edgar Wilson he had not considered at the time my attitude in the matter and he had not known of the absolute dissolution of our former partnership. It appears from statements of Senator Dubois that Mr. Wilson gave him and others to understand that when he actually went into the case, he did so because I desired him to be there thinking that his employment would be a source of protection to the community, and was accepted as such. I have given the substance of the interview between Mr. Wilson and myself. I might add that Mr. Wilson advised me that he had consulted with Senator Borah in relation to the matter and that Senator Borah advised him that he could see no reason why he should not accept the employment. I never consulted with Senator Borah in relation to the matter. After the trial had proceeded for some time I personally attached no importance to the appearance of Mr. Wilson in the case. My first recognition of his real connection with the case came at the conclusion of the evidence for the State when the State had submitted its case. The motion was made in behalf of the defendant, Haywood, requesting the Court to give to the jury an advisory instruction for a verdict of not guilty on the ground that under the statute there was no corroborating evidence of Orchard's testimony sufficient to justify a conviction. As I then viewed and have ever since viewed the actual situation as presented by that motion there

was very little legal corroboration upon which a verdict of guilty could be justified, and when the Court came to the consideration of the matter, the appearance of Mr. Wilson in the case was thrust upon the Court as an almost controlling factor. At the close of the argument on the motion for advisory verdict the Court immediately denied the motion without further consideration. The evidence or lack of corroboration, I found, was given little thought, but two facts loomed prominent in the mind of the Court which could not be escaped. One was the appearance of Edgar Wilson in the cases as attorney for the defendants; the other was the fact that at the instance of and on application of the attorneys for the defendants, the State had already been put to a great expense in bringing the witnesses from outside states to testify on behalf of the defendants.

In considering this case from a retrospect of more than twenty years, I admit I feel that had Edgar Wilson been absent from the case as attorney for the defendants the decision of the Court on the motion for advisory verdict might have been different and the trials there terminated. In reaching this conclusion I desire to say that there would be no inconsistency between this position and the subsequent rulings of the Court in the Haywood case and in the Pettibone case holding that there was sufficient corroborating evidence to warrant the submission of the cases to the consideration of the jury. The principal portion of the corroboration in the Haywood case was developed through the witnesses of the defendants when making their defense and while there was little or no corroboration against Haywood in the original presentation by the State, it was my opinion that the corroboration was ample when the case against Haywood was submitted as well as upon the conclusion upon the trial of the defendant, Pettibone. I realize when taking this retrospective view of the situation that I cannot claim that the Court was uninfluenced by the appearance of Edgar Wilson in the case. I can only say, however, that I considered at the time and have ever since considered that it would have been cowardly upon my part to have admitted for the moment that I could not try the

case without embarrassment to myself with Wilson acting as one of the attorneys for the defendants.

In subsequent years while discussing this case with one of the leading members of the Idaho bar, he told me that his reaction to the published announcement of Mr. Wilson's employment was the expectation that the Court would notify him that one or the other of us must get out of the case before the trial commenced and I am inclined to think that subsequent developments indicate that this was the thought of many of our former associates and the Ada County bar.

I have felt for personal reasons that these facts should be recorded.

In the conclusion of my interview heretofore referred to with former Senator Dubois he urged me to make a record of these facts and my only regret is that these lines could not have been penned in time for submission to him before his sudden taking off. With this brief statement I leave to the consideration of the bench and bar of the country my action in this matter and I do so the more readily because I have felt during the years succeeding the trial of these cases that my friends and family should be placed in possession of a true statement of the facts involving the case and the motives governing my action so far as I had any control of the situation.

Transfer From Colorado

Following the arrest of the three defendants in Denver, Colorado, the State and Federal authorities of both Idaho and Colorado were severely criticised for the methods employed. I have made a somewhat careful investigation of the circumstances surrounding the arrest and transportation of the defendants from Colorado to Idaho. The cry of kidnapping was suddenly aroused and an attempt was made to inflame the labor world with the belief that the defendants had been deprived of legal rights to which they were entitled. The fact of the matter was that no action was taken which was not strictly in accordance with the legal rights of the State officers demanding the arrests and removal. Every step taken was in strict conformance with the statute. The complaint of the defendants and their friends was that they had not

been given an opportunity to contest their right of removal within the State of their arrest rather than be compelled to raise the question in the State where the crime with which they were charged was committed. When asking for the extradition, the officers of the State of Idaho did so with the knowledge that the Courts of Colorado had for a long time been involved in a war between the mine owners and the labor organization of which these defendants were the principal officers. They knew that it might be a long time before the defendants could be removed from Colorado if given the opportunity to raise technical questions there that could not go to the merits of their defenses and they have always felt as though with the facts of the Orchard confession before them that the officers of both states were to be commended for the celerity with which the defendants were arrested and transported to Idaho.

The actual trial of the defendant, Haywood, commenced May 9, 1907. Considerable time was occupied in selecting a jury when the case was called. There was but a small jury panel from which the selection of jurors could begin and it became necessary during the proceedings to issue additional venires for jurors. In impaneling this jury a situation arose which I think should be given attention at this time. In other words, I think it is of sufficient importance that proper record thereof should be made. During examination of jurors one or two of the talesmen in answering questions as to their qualifications disclosed the fact that they could not convict a defendant on the testimony of Orchard, the accomplice. It was known and had been published far and wide that Orchard was to be a witness for the State and that his testimony would be amply corroborated. When it developed that prospective jurors would hesitate to consider his evidence, an attempt was made, calculated to meet these objections, to present the accomplice, Orchard, to the public, at least, that this feeling of opposition would be obviated. After considerable time had been occupied in selecting the jury, my attention was called to publications in the public press to the effect that newspaper correspondents had been admitted into the penitentiary and had been permitted to have extensive interviews with Orchard,

the result of which interviews were published in the daily press in which they quoted Orchard's statement and not only expressed their belief in his statement, but from their own standpoint gave very controlling reasons therefor. The result of two of these interviews as I now recall were published in the *Idaho Daily Statesman*, one over the signature of O. K. Davis, the correspondent representing the *New York Times* Syndicate at the trial, and one by A. E. Thomas, who at the time was representing the *New York Sun*. The *Statesman*, likewise, carried a full news column covering the interview, with the resulting conclusion that Orchard was telling the exact truth. My first thought, upon reading the statements, was that the authors were guilty of a most flagrant contempt of Court. When the sheriff returned a new panel of jurors, it was the custom of the Court to request the jurors not to read the daily papers, but the Court had no control of that situation until a prospective juror was drawn from the general panel. At the time of this publication there was a very large panel of jurors ready to report to the Court when the Court assembled the morning following these publications. The Court was so impressed with the injustice and unfairness of these publications that, upon the convening of the Court, all jurors and prospective jurors were excluded from the Court room and the Court on its own motion called attention to the fact of these publications and suggested the propriety of an examination thereof before further proceeding in the case. As a result of a brief hearing upon this question the Court referred the matter to the district attorney of Ada County with instructions to make a thorough investigation of the same and report the facts with his recommendation to the Court. The prosecuting attorney subsequently reported his conclusions to the effect that there was no intentional violation amounting to contempt on the part of the correspondents involved and no further action was taken. I am satisfied, however, that if this situation had arisen growing out of an important trial in an English Court that the perpetrators would have been severely punished. As evidence of this suggestion I would point to a circumstance in connection with the trial of Dr. Crippen who with his co-defendant was arrested and taken

from an English steamer upon its arrival at Halifax. The arrest of Dr. Crippen meant his immediate return and trial, yet, upon the day following his arrest, the *London Times* published by Lord Northcliffe carried the story of the crime with details indicating certain guilt, for which the Court very promptly fined him a large sum for contempt. I consider these matters of so much importance that I think the publication should here be reproduced and a proper record made thereof.

During the examination of the jurors on May 15, an examination of one of the prospective jurors was concluded by Senator Borah as follows:

"I understand you to say that you have a deep seated prejudice against any testimony that Orchard might give in the case."

Answer: "I couldn't help it."

Whereupon Senator Borah challenged the juror for direct bias. This challenge was resisted by Attorney Richardson for the defense who announced his position as follows:

"We resist, the juror has a perfect right to a bias against any particular line of testimony."

To which the Court promptly ruled:

"The challenge is allowed."

A former juror had expressed the same opinion that he could not accept the testimony of Orchard against the defendants on trial. When the Court adjourned on May 15, the jury was only partially completed and a considerable number of talesmen remained to be called for examination. All jurors called after having been passed by both sides for cause were retained in the jury box and during adjournments the jury was kept together in the custody of bailiffs sworn for the purpose. The Court, however, had no power over the prospective jurors who had been summoned but not called and it was during the intermission between the said adjournment and the convening of the Court on the following day that the matters occurred to which attention is here being called. I have no official reporter's transcript of these proceedings but the matters complained of were set forth, I believe, with a great

degree of accuracy in the *Daily Statesman* which carried not only its special report of the proceedings but also used the principal features of the material sent out by the Associated Press. The *Statesman* local which carried the account of the interviews with Orchard appears in part as follows:

"After a year and five months, Harry Orchard, the man whose testimony, supported if possible by substantial proofs in many respects, the State is relying on in the prosecution of William D. Haywood, Charles H. Moyer, and George A. Pettibone on the charge of the murder of former Governor Steunenberg, has consented to be interviewed by newspaper men. During the forenoon he was visited by representatives of the Associated Press, J. R. Kennedy and Martin Eagin, O. K. Davis of the *New York Times* and A. E. Thomas of the *New York Sun*. A story of that interview is published elsewhere as sent out from here by the Associated Press. In the afternoon, Orchard saw and talked with Hugh O'Neill of the *Denver Post* and J. W. Carberry of the *Boston Globe*.

"It had been arranged that a larger party of visiting and local newspaper men should visit and interview the man who had been reported to have confessed to the murder of former Governor Steunenberg and other crimes at five o'clock yesterday afternoon but through a misunderstanding between those who were arranging the matter the larger party of news writers did not get to the State prison until nearly eight o'clock. In the party were the following: Governor Gooding; Governor's Secretary, Charles Elmer; C. N. Landon of the *Cleveland Press*; John Fay of the *New York World*; Luke Grant, *Chicago Record Herald*; J. S. Dunnegan, Hearst Papers; E. G. Leipheimer, *Butte Evening News*; J. E. Nevins, Scripps-McRae Service; B. Phillips, Correspondent; John Tierney, *Denver News*; J. H. MacLennan, the *Denver Republican*; Joseph Waldeck, Newspaper Enterprise Association; H. L. Crane, *Statesman*."

And further:

"The above party took the electric car to the natatorium where they were met by two rigs from the penitentiary. They were driven to the Warden's office where each man was requested to register. Warden Whitney then explained that Orchard had consented to be interviewed, but that no questions must be asked relating to any feature of the case. Any other proper questions might be asked Orchard although he might not be willing to answer them all. The newspaper men were then taken into the Clerk's office to meet Orchard. Neither the Governor nor his secretary entered the room but Warden Whitney accompanied the party."

The article then proceeds as follows:

"Seats had been arranged about the office to accommodate the visitors. As the newspaper men filed into the room, a short, stoutly built

man dressed in a neat fitting, light weight, apparently new suit of a gray material rose from his seat in the farther end of the room.

"‘Gentlemen,’ announced the Warden, ‘this is Harry Orchard.’

"Perfectly at ease, a smile playing about his lips, Orchard nodded pleasantly to the visitors and greeted them with: ‘I am very pleased to see you.’ Orchard is far from the man that he was a year and five months ago in appearance as remembered by the writer who saw and talked with him in Caldwell the day following the murder of former Governor Steunenberg and just before his arrest. Then there was a cruel expression about his mouth. His eyes were steely, shifting.

"Orchard’s lips are now mounted by a well-kept brown moustache; last night his blue eyes were not shifty; they had a soft frank look and they gazed right into the eyes of those who talked with him. About his mouth a half smile played almost continually when he spoke and several times his eyes twinkled. He was not such a man as one would readily believe had committed the crime which he is said to have confessed to perpetrating. Looking at him, noting his open countenance, his easy, graceful manner, listening to his conversation, his intelligent use of words, one could imagine him as following almost any path in life rather than that of crime.

"The first question asked him was in regard to the truth of the report that he had made certain statements to Detective McParland: ‘I do not believe I care to go into that matter,’ replied Orchard. ‘I have never yet admitted or denied that I made any statements. I will say this, however, if I ever have made any statements they have been made of my own free will.’

"Question: ‘You have never been promised immunity?’

"Answer: ‘I have never been promised anything,’ was the reply.

"Orchard was asked if religious influences had been brought to bear upon him to cause him to make a statement if he had made one. That question he also declined to answer. . . .

"Telling of his reading matter, an inkling was gained of the fact that his research had been along religious lines. He has read a great deal of history, mostly ecclesiastical history. He said he had never received any threatening letters. He said he kept in close touch with the news of the world. He read the local papers and several papers from Salt Lake and Denver. The papers were not clipped, they came to him just as they were printed. . . .

"Before leaving, Orchard was asked by Dunnegan to make some statement that could be copied by all the newspaper men present and quoted in his own words. Orchard replied that he had no statement to make but after a little thought he dictated the conditions at the beginning of this story:

"‘I have nothing in particular to say but I might say that anything I may have said, I said with my own free will and accord after taking plenty of time to deliberate. There was never any force or coercion used

at any time or any threats by word or deed. There have never been any promises made of any kind.’”

This latter statement was carried in heavy type under large headlines, calculated to call immediate attention to everyone even casually reading the paper. After these interviews with Orchard, O. K. Davis and A. E. Thomas furnished the *Statesman* with the personal statements above referred to. Here follows the statement as signed and published by O. K. Davis:

“Orchard surprised me a good deal. From the stuff I had read about him, I was not prepared to meet just such a clean-cut, well-dressed young fellow as he now is. This surprise at first meeting him was increased by his talk and his manner. These conveyed irresistibly a strong impression of sincerity. There was about him an air of composure and serenity which expressed more plainly than any words he could utter the fact that he has reached a thoroughly satisfactory solution of his problem. He has squared accounts with himself.

“I believe he understands perfectly what is before him, and has made up his mind to meet it squarely. He may flinch under the ordeal, but I shall be much surprised if he breaks down. Manifestly there has been a tremendous change in Orchard since he was arrested. Men who have lived the life he led prior to that do not easily become interested in ecclesiastical history, the Reformation, and the lives of George Whitfield and John Wesley. It strikes me as significant and illuminating that Orchard has chosen that line of reading. I can hardly believe that he is doing it for an ulterior purpose. His manifest intelligence, alertness of mind, quick comprehension, and ready humor are more than sufficient contradiction of the reports of his fading strength and failing mind.

O. K. DAVIS”

Here follows the statement as prepared and published by A. E. Thomas:

“Harry Orchard has balanced his books. It has been a long and weary task and the marks of its harrowing hours are visible upon the face of the bookkeeper. But the task is finished at last. Harry Orchard knows what he owes to the people of America and to his own conscience and he has determined to pay the bill. It may be that in the currency of reparation he has not the wherewithal to settle with his creditors, but that he is willing to bankrupt himself in the effort to do so there is no manner of doubt. This, at all events, is the impression which I carried away with me from the half hour’s talk I had with him yesterday at the state penitentiary.

"Harry Orchard is said to be today a very different person from the man who entered the prison 16 months and more ago. It is easy to believe it. Today, at least, he is strong in body, keen of mind, serene of spirit, master of himself and all his purposes. What he said in the interviews of yesterday is told elsewhere in this newspaper. It is not necessary to repeat it here. But it may be of interest to record the impression that he made upon one of those who saw him after these many months of a seclusion which he is soon to leave for the fierce light that beats upon the witness chair.

"Of course, the clearness of Orchard's mind and the vigor of his body are all of importance and interest, but the most vital thing of all is the attitude of his mind toward the task that lies just before him. That whatever he has said or done since his confinement began has been done or said voluntarily and without coercion or inducements, he gave his word in my hearing. I believe his statement implicitly—not because I know anything of his credibility, but because the man is convincing.

"Whatever the Harry Orchard of December 30, 1905 may have been, men who look like the Harry Orchard of May 16, 1906 are men who tell the truth. There is a conscience behind those blue, unfaltering eyes of his. How it came to be there, how it germinated, how it grew, is a story that will sometime be told. But that time is not yet.

"The day on which Harry Orchard takes the witness stand in the little court house on Jefferson Street will be a day long to be remembered in Boise and America. And it will be remembered quite as much for the man himself as for the story that he tells.

A. E. THOMAS."

The *Statesman* which contained the above published account as well as the signed statements of Davis and Thomas, likewise published in connection with its daily report these proceedings as they were sent out by the Associated Press. This interview was carried by the Associated Press and was preceded by a statement calculated to reinstate Orchard in the public mind. It was in part as follows:

"Orchard denied that he had been submitted to any mistreatment during his long confinement, denied that duress or force had been used upon him to secure the statements he has made, and denied that Detective McParland and the officers of the state have promised him immunity for his confessed crime or reward for the value of his alleged confession in the hands of the state.

"Orchard's manner and conversation during the interview tended to strongly confirm the assertion that he has been reconverted to and is deep in the zeal of the Christian religion. Two illustrations used by him

to explain a change in the kind of books he reads were Christian-like in character and religious in tone. . . .

"No expectation of the make and manner of the man known to have confessed that he committed a series of revolting murders, including that of Frank Steunenberg, was realized in the prisoner brought by the guard to Warden Whitney's private office. As far as appearances go the prisoner might have gone any walk in life except the one his own story says he traveled."

I have always thought and I still think that a grave mistake was made in these publications. I should state here perhaps that Mr. Hawley, speaking for the State, denied all knowledge of or responsibility for the Orchard interviews and complained at the same time that the State was injured thereby more than the defense could possibly be. I have never ascertained the exact conditions upon which these interviews of Orchard were secured. They could have been secured only through the consent of those in authority, and the statement of Mr. Hawley, publicly made in Court, made it absolutely certain that no such authority was secured through the attorneys representing the prosecution.

The selection of the jury was completed and the taking of evidence commenced on the fourth day of June. I have always felt that too much time was allowed for the selection of the jury; but perhaps criticism for this should not be placed upon either the prosecution or the defense. It is possible that any blame therefor should be placed upon or assumed by the Court. Under the peculiar circumstances of the case great latitude was allowed in the examination of the prospective jurors, and the court, exercising a wise discretion, probably allowed challenges for cause where a more strict interpretation of the law would have suggested denial of the challenges. At the time of the selection of the jury it became apparent that the case was being tried before a greater jury than that selected in the Court room and this fact undoubtedly had its influence upon the Court and also upon the attorneys representing both sides, who realized that every movement was being scrutinized by more interested people than had ever

before followed the trial of an individual case in the history of the country. The leaders of the labor world had unfortunately involved the President of the United States in the controversy and the President's reply, quite as unfortunate, had inflamed organized labor and the socialist propagandists to the extent that the same could not be kept out of the case while examining prospective jurors.

The jury was completed and the trial actually commenced on June 4. It was concluded and submitted to the jury July 28. On the following day the jury returned a verdict of not guilty and the defendant, Haywood, was discharged.

The trial of the defendant, Pettibone, was set for October 1, following. Applications were made for admission to bail for both the defendants, Moyer and Pettibone. Pettibone's application for bail was immediately denied by the Court, but, with the consent of counsel for the prosecution, the defendant, Moyer, was admitted to bail in the sum of \$25,000.00, which was afterwards furnished.

Pettibone

The trial of Pettibone commenced November 27, 1907, and continued until January 5, 1908, when the jury returned a verdict of not guilty. The defendant, Pettibone, was immediately discharged and the defendant Moyer was discharged, on motion of the prosecuting attorney, for want of corroborating evidence.

Harry Orchard

Orchard was taken before the Court on March 10, following. His case stood upon a plea of not guilty, entered by order of the Court. When he was brought before the Court, he stated personally to the Court that he desired to withdraw the plea of not guilty that had been entered and enter a plea of guilty, as charged in the indictment. After a careful examination of Orchard by the Court, it appeared that he understood exactly what he was doing and the consequences of his act; that the Court had no discretion in the matter and that the penalty was death. The Court then fixed the time for sen-

tence for March 18, at the same time advising Orchard that he would have the intervening period to consider the matter and determine whether or not he still wanted his plea to stand.

On March 18, 1908, when taken before the Court, he still insisted that his plea should stand, notwithstanding the result that must necessarily follow, and the Court proceeded to pronounce the death penalty, but before doing so, reviewed the case in its entirety, stating that he believed in the truth of Orchard's testimony in both the Haywood and Pettibone trials and recommended Orchard to the clemency of the Pardon Board, with the recommendation that his sentence be commuted to imprisonment for life. This action was subsequently accepted by the Pardon Board and the Orchard sentence was commuted to life imprisonment.

After reviewing the testimony of Orchard upon both the Haywood and Pettibone trials, the Court, in pronouncing judgment upon Orchard, among other things said:

"During the two trials to which I have referred, the testimony of the defendant, Orchard, covered a long series of transactions, involving personal relations between himself and many others. On the first trial he was subjected to the most critical cross-examination by very able counsel for six days, and I do not now recall that at any time he contradicted himself on any material matter. On the other hand, he disclosed his connection with the commission of many other crimes that were probably not known by the attorneys for the state, or at least not brought out by them on the direct examination of the witnesses.

"Upon the second trial referred to, the same testimony was given, and a thorough and critical cross-examination followed. In no particular was there any discrepancy in material matters between the testimony given upon the latter trial, and that given by the same witness on the former trial.

"It was the particular province of the Court to observe and follow the witness upon the former trials and I am of the opinion that no man living could conceive the stories of crime told by him and maintain himself under the merciless fire of cross-examination by leading attorneys of the country, unless upon the theory that he was testifying to facts and circumstances which had an actual existence in his own experience. A mere child may testify truthfully and maintain himself upon cross-examination. A man of mature years may be able to frame his story and testify falsely to a brief statement of facts involving a single transaction and maintain himself on cross-examination. But I cannot con-

ceive of a case where even the greatest intellect can conceive a story of crime, covering years of duration with constantly shifting scenes and changing characters, and maintain that story with circumstantial detail as to times, places, persons and particular circumstances, and under as merciless a cross-examination as was ever given a witness in an American court, unless the witness thus testifying was speaking truthfully and without any attempt to misrepresent or conceal. Believing as I do that this defendant acted in good faith, and when called as a witness for the State he told all and withheld nothing, I can more readily fulfill the duty that I consider the law imposes upon me."

And, after referring to the attempts to murder those in high authority, the Court in pronouncing judgment further said:

"I want to take the opportunity of this solemn occasion to say to the associates in crime of this defendant, that they cannot by such acts terrorize American executives and prevent them from performing their plain duties, and they cannot prevent American courts from declaring the law exactly as they find it. Judges and executives may be placed out of the way by the hand of the assassin, but there will be others immediately to take their places just as ready and just as determined to perform their duties as their predecessors were, and backed by a public opinion that will ferret out and disclose the authors of every such crime."

Following the action of the Court in recommending commutation of Orchard's sentence I received personal communications from two of the Colorado judges, whom Orchard had attempted to assassinate by placing bombs for explosion, one at the entrance of Judge Goddard's gate, the other beside a path frequently traveled by Judge Gabbert, which caused the death of a person not intended by the assassins.

On the afternoon of March 18, Judge Gabbert wrote me as follows:

"State of Colorado, Supreme Court Chambers, Denver

March 18, '08.

My dear Judge:

I have just read with interest and pleasure the remarks made by you in sentencing Orchard, as published in one of the evening Denver papers. Permit me to say that in my judgment you have said and done the right thing at the right time.

Yours sincerely,
W. H. GABBERT."

Under date March 27, I received the following letter from Judge Goddard:

"Supreme Court Chambers, State of Colorado, Denver

March 27, 1908.

Hon. Fremont Wood, Boise City, Idaho.

Dear Judge:

Your favor of the twentieth instant, and papers containing proceedings upon sentence of Orchard, received.

I think your statement of the case and of the law applicable under the circumstances is admirable, and the course you recommend is eminently just. What you say in regard to Orchard's testimony will confirm the opinion entertained by all law-abiding citizens throughout the country that Haywood and Pettibone were guilty, notwithstanding their escaped conviction and punishment.

Congratulating you for the able and impartial manner in which you discharged your duties in the trial and final disposition of the cases, I remain, with much esteem,

Sincerely yours,
L. M. GODDARD."

Under date of March 24, I received the following letter from Senator Wm. E. Borah, who had assisted in the prosecution of Haywood:

"United States Senate

March 24, 1908.

My dear Judge:

The press dispatches which carried briefly the remarks made by yourself in sentencing Orchard caused very favorable comment indeed among all the people with whom I come in contact. Some of the members of the Senate were especially complimentary in their remarks. I have just read the address in full as published in the *Statesman* and I want to congratulate you sincerely. It is a remarkable utterance and you are entitled to a vast amount of credit, not only in the fact of your stating them but in the question of its style and great force. I am especially pleased with that portion which relates to the veracity of Orchard and the blow which you gave generally to organized assassins. I have not taken the same view with reference to Orchard's punishment that some of the others have, including yourself, but I will not find fault with it. Perhaps if it were not for the close personal feeling I had for Steunenberg and the great amount of bitterness which this thing has caused to so many of us, I would feel differently. But as I said, that as to this part of it and the action which the Board may take, I will remain silent. But I am awfully proud of your address and heartily congratulate you.

Very respectfully,
WM. E. BORAH."

Hon. Fremont Wood,
Boise, Idaho.

These letters were indicative of the general feeling of the public regarding the Court's action involving the Orchard sentence. The contrary view was taken by the representative of the organized miners. The acting secretary of the Western Federation, on the evening of March 18 gave out the statement that the action of the Court was simply taken by Judge Wood to carry out a promise made by the executive for Orchard's release in consideration of his testimony against Haywood and Pettibone.

The press of the country apparently recognized the wisdom of the course taken by the Court.

Speaking apparently for the state press, on March 19, 1909, the *Statesman* contained the following brief editorial:

"JUDGE WOOD'S STATEMENT

"The *Statesman* presents in this issue the full statement made by Judge Fremont Wood in pronouncing sentence upon Harry Orchard. It is a document so far-reaching in its conclusions, and one from which so many deductions may be made that extensive comment upon it at this time would be premature. Every citizen of Idaho should read it thoughtfully, for every sentence in it is worthy of consideration in view of past events and those which yet may come. No more direct arraignment of the forces that have terrorized this state for years has ever been written than appears in this document. No stronger argument has ever been made why the fight should go on against the foes of law and order. The people of Idaho should weigh every word well."

The *Los Angeles Times*, which was not considered particularly friendly to organized labor, speaking for the conservative press, had the following editorial, Friday, March 20, 1908, which was understood at the time to have been written by Harrison Gray Otis, the then owner of the paper.

"A RIGHTEOUS JUDGE

"In sentencing Harry Orchard, Judge Wood at Boise City sets an excellent example for all those who occupy a place on the bench. This example is not remarkable in being singular. It is but recently that departure from old-time standards of performing judicial duty has arisen among us to such a degree as to make it worth while to call attention to a righteous judgment from the bench. Unfortunately, of late we have had experience of men wearing the ermine utterly unfit in every respect (including knowledge of the law and the judicial temperament

or disposition) to sit in judgment upon the case of any person charged with crime or misdemeanor.

"Judge Wood is the same who presided over the trial of W. D. Haywood and George Pettibone in this court in Idaho. It will be recalled that there was almost unanimous acquiescence given to the discharge of both these defendants, although there was a very strong feeling in the minds of a majority of the people of this country that they were guilty. The acquiescence came from the fact that Judge Wood had followed implicitly both the letter and the spirit of the laws of the State of Idaho, had leaned to the side of mercy towards those accused of crime, and had manifested in a remarkable degree that calmness of disposition and poise of judgment which fit a man for performing a judge's duties. These duties are exceedingly important to the public and exceedingly delicate because of their bearing upon individuals charged with crime.

"In sentencing Harry Orchard Judge Wood reviews the trial of Haywood and Pettibone in a brief summary, but exceedingly enlightening way. His opinion is direct and distinct that both these men, although discharged by the jury and according to his opinion properly discharged, were in reality guilty of everything charged against them; that Harry Orchard told the exact, explicit truth without keeping back anything and without adding anything thereto. But Judge Wood points out the fact that by the laws of Idaho the testimony given in such a case by one who has turned state's evidence would not be sufficient to convict unless definitely and explicitly supported by entirely independent testimony.

"Let us analyze the attitude of this just judge. He presided over the trial of those two men, charged with a long series of diabolical crimes. He felt assured from his observation of the prosecuting witness, with his long experience as a lawyer, prosecutor, defender, and judge, that Orchard was telling the truth exactly, that these men were guilty; and yet, as in duty bound, under his oath to administer his office according to the law, he gave such instructions as resulted in the acquittal of both these alleged criminals.

"It is worth repeating that such judicial temperament and action have characterized the course of judicial officers in these United States from the time the government was set up until within exceedingly recent days. In these days on which we have fallen, of a revolutionary spirit against the customs, traditions, and principles of the past, we have unhappily and lamentably seen occupying the bench a few judges ignorant of the law, ferocious of spirit, possessed of a diabolical prejudice against men before their bench charged with crime, intent upon joining bloodhound prosecutors in railroading people into penitentiaries without due respect against the letter and spirit of our laws, which mean to be just and which are generally just. Not only this, but some of these men (unfortunately occupying these places of importance) have gone out of their way in expressing violently their opinions as to the guilt of other men not yet brought before them for trial. They have branded people in a wholesale way as criminals before they could pos-

sibly have obtained any accurate, full or sufficient knowledge of the evidence.

"Fortunately for us, the great statesmen who laid foundations of our government with almost divine prescience looked into the future and saw evil days like these that we are coming to. They therefore put checks and counterchecks upon the administration of justice so that there is an appeal from a lower court to a higher one, ranged in a gradation which almost insures exact justice somewhere along the line. But for this provision, the personal safety, the liberty, and even the life of citizens would be at stake, pursued as they are by detectives and prosecutors prejudiced against citizens, intent, determined upon convicting them, and aided by judges ignorant of the law, obsessed by public clamor, afraid in the face of hostile opinion to render a just judgment, or through prejudice inimical to persons to be brought before their bar, following their feelings, the clamor of the mob, and the path of popularity rather than the line of exact law and even-handed justice.

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Orchard is still serving his commuted sentence in the Idaho State penitentiary.



